

JAMES GEORGE, et al.,)	
)	
Plaintiffs,)	Case No.: 2:10-cv-01664-GMN-NJK
vs.)	
)	ORDER
DIRECTSAT USA, LLC, et al.,)	
)	
Defendants.)	
)	

On March 12, 2012, the Court denied Defendants’ previous motion to dismiss. (Order, March 12, 2012, ECF No. 56.) However, the Court granted Defendants leave to re-file the motion to dismiss in order to fully brief their arguments regarding FLSA preemption, discussing the recent and evolving precedent from the United States Supreme Court and the Ninth Circuit Court of Appeals. (*Id.*) Specifically, the Court referred to the Ninth Circuit Court of Appeals’ now-vacated opinion in *Wang v. Chinese Daily News*, 623 F.3d 743 (9th Cir. 2010), *vacated*, - - - U.S. - - -, 132 S.Ct. 74, 181 L.Ed.2d 1 (Oct. 3, 2011) (mem.) and to *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. - - -, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011). The Court also referred to the Seventh Circuit case law in *Espenscheid v. DirectSat USA, LLC*, No.

1 3:09-cv-00625-BBC, 2011 WL 2132975, 2011 U.S. Dist. LEXIS 57607 (W.D. Wis. May 27,
2 2011) and *Ervin v. OS Rest. Servs., Inc.*, 632 F.3d 971 (7th Cir. 2011), which the parties had
3 cited. The Court gave Defendants until April 12, 2012, to re-file the motion (Order, March 12,
4 2012, ECF No. 56), and Defendants did so on April 12, 2012 (ECF No. 62). The motion was
5 fully briefed as of May, 2012. (*See Reply*, ECF No. 64.)

6 Now, Defendants request permission to submit supplemental authority, or in the
7 alternative, supplemental briefing. To support their request, Defendants attach the February 4,
8 2013, opinion of the Seventh Circuit in *Espenscheid v. DirectSat USA, LLC*, No. 12-1943, 705
9 F.3d 770 (7th Cir. Feb. 4, 2013), as well as the March 4, 2013, opinion of the Ninth Circuit in
10 *Wang v. Chinese Daily News*, No. 08-56740 (9th Cir. Mar. 4, 2013). In both opinions, the
11 circuit courts held that class certification was not appropriate in the cases below. “Because
12 Defendants relied upon the above referenced cases in their renewed motion and in the interest
13 of candor to the Court, Defendants seek to supplement the record with notice of the attached
14 opinions, or alternatively, seek leave to file supplemental briefing in support of their Renewed
15 Motion to Dismiss.” (Mot. to Submit Supp. Auth., ECF No. 72.)

16 The Court agrees that supplemental briefing is appropriate, and will therefore grant the
17 motion. The currently pending motion to dismiss will be denied without prejudice, so that the
18 parties may brief the issues in light of recent binding and persuasive authority discussed above.

19 **IT IS HEREBY ORDERED** that the Motion to Submit Supplemental Authority or,
20 Alternatively, to Allow Supplemental Briefing (ECF No. 72) is **GRANTED**.

21 **IT IS FURTHER ORDERED** that the Motion to Dismiss (ECF No. 62) is **DENIED**
22 **without prejudice. Defendants shall file an updated motion to dismiss, including briefing**
23 **on supplemental authority, by April 5, 2013, unless the parties stipulate otherwise.**

24 **DATED** this 14th day of March, 2013.

25 
Gloria M. Navarro
United States District Judge